

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

Q.T., *et al.*,

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Plaintiffs,

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v.

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CASE NO. 1:19-cv-01285 (RDA/JFA)

FAIRFAX COUNTY SCHOOL
BOARD, *et al.*,

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Defendants.

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**PLAINTIFFS' MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL
AUTHORITY IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

Plaintiffs, by and through their undersigned counsel, respectfully request that this Court issue the attached order granting: (1) Plaintiffs leave to file a Notice of Supplemental Authority in Opposition to Defendants' Motion to Dismiss (ECF No. 27); and (2) consolidate the hearing on Plaintiffs' Motion for Leave to File Notice of Supplemental Authority with the hearing on Defendants' Motion to Dismiss once that matter has been rescheduled by the Court. In support thereof, Plaintiffs state as follows:

1. Defendants' Motion to Dismiss has been fully briefed since February 21, 2020, and a hearing was previously scheduled for March 20, 2020. In light of the COVID-19 pandemic, the hearing was removed from the calendar and has not yet been rescheduled.

2. Certain legal opinions have been rendered since the date of Defendants' dispositive motion and the Plaintiffs' Opposition were filed in this case. These new and additional legal authorities are relevant to the issues presented in the parties' briefing, and Plaintiffs believe they should be brought to the Court's attention.

3. As the issues at hand go to the heart of the case and involve only matters that arose since the briefs were filed and the case stayed in response to the COVID-19 pandemic, filing them is both appropriate and part of Plaintiffs' ethical obligation to the Court to maintain currency on case law developments.

4. Defendants are now well-aware of the authorities cited by Plaintiffs in their Notice of Supplemental Authority. Plaintiffs attempted, several times, to meet and confer with Defendants regarding filing a supplemental notice. In response to Plaintiffs' overtures, Defendants responded with cases that they suggest are similarly helpful for the Court to review.

5. For reasons unknown, Defendants sought to impose first a word and then a page limitation before agreeing to consenting to any filing. Given the volume of rulings and the need to identify them, Plaintiffs responded with a suggested briefing schedule. Unfortunately, while the parties agree that supplemental filings are appropriate, they disagree on the logistics.

6. Because the parties did not reach an agreement, Plaintiffs seek approval from this Court to accept the attached Notice of Supplemental Authority and to address the supplemental authorities identified by Plaintiffs at the hearing on Defendants' Motion to Dismiss.

Accordingly, Plaintiffs respectfully request that the Court enter the attached consent order:

- A. Granting leave for Plaintiffs to file their Notice of Supplemental Authority; and
- B. Consolidating any discussion on Plaintiffs' Notice of Supplemental Authority into the hearing on Defendants' Motion to Dismiss.

Dated: June 23, 2020

Respectfully submitted,

/s/ Kevin Byrnes

Kevin E. Byrnes, VSB No. 47623
Fluet Huber + Hoang, PLLC
1751 Pinnacle Drive
10th Floor
Tysons, Virginia 22102
T: (703) 590-1234
F: (703) 590-0366
kbyrnes@fhhfirm.com

Regina Kline (*pro hac vice*)
Eve L. Hill (*pro hac vice*)
Sharon Krevor-Weisbaum (*pro hac vice*)
Anthony J. May (*pro hac vice*)
BROWN, GOLDSTEIN & LEVY, LLP
120 East Baltimore Street, Suite 1700
Baltimore, Maryland 21202
T: (410) 962-1030
F: (410) 385-0869
RKline@browngold.com
EHill@browngold.com
SKW@browngold.com
AMay@browngold.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 23, 2020, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to counsel of record for all parties.

/s/ Kevin Byrnes

Kevin E. Byrnes, VSB No. 47623